STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of E.E.T. KLESS, Minor.

UNPUBLISHED
March 25, 2014

No. 317891
Oakland Circuit Court
Family Division
LC No. 11-784894-NA

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(g), (j),[1] and (l). Because we conclude there were no errors warranting relief, we affirm.

Respondent first contends that the trial court clearly erred when it found that the Department of Human Services had proved a statutory ground for termination by clear and convincing evidence. This Court reviews for clear error the trial court's finding that the Department proved a statutory ground for termination by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

The trial court did not clearly err when it found that there was clear and convincing evidence that respondent, "without regard to intent, fail[ed] to provide proper care or custody for the child" and that "there [was] no reasonable expectation that [she] will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g).

There was evidence that the Department took steps to remove the child from respondent's care after the child suffered suspicious injuries and respondent refused to take the child for medical treatment. The Department's involvement, moreover, occurred just two weeks after

[1] The trial court only cited MCL 712A.19b(3)(g) and (j) in its order. However, the referee verbally amended the order to include MCL 712A.19b(3)(l).

closing a prior case with respondent involving the same child. These circumstances support an inference that respondent was unable or unwilling to provide proper care and custody to the child.

Although there was evidence that respondent had completed the services required in the prior case, the trial court was rightfully concerned with the extremely short duration between the dismissal of that case and the beginning of the new investigation. The fact that the Department had to again become involved so soon after completing a prior case that involved significant services strongly suggests that respondent did not benefit from the provision of those services. In addition, both Aerial Ali, a Department worker, and Laurie Lambertsen, a foster care case manager who worked with respondent during the previous case, testified that respondent refused any new services at a family meeting concerning the new case. Respondent's refusal to participate in any further services is evidence that she would be incapable of providing proper care within a reasonable time, especially given the evidence that she did not benefit from the prior services. The referee opined that the timing of events was the key factor in the decision to recommend termination: the child, who was quite young, had only been returned to respondent for a couple months before he received injuries that required medical care.

The referee did not determine whether respondent caused the child's injuries, but instead focused on the fact that he was injured while in her care. Nevertheless, even if respondent did not directly cause the child's injuries, the child first suffered injuries to his head when she left him in another's care. And then, on the same day, the child purportedly suffered another fall while left unsupervised. The evidence that the child sustained injuries to different parts of his head on the same day in two separate incidents suggests that respondent was not exercising proper care and custody over the child. In addition to this evidence, respondent's response to the child's injuries was indicative of her inability or unwillingness to properly care for him.

Deputy Sheriff Kathleen Mickens went to respondent's apartment complex following an anonymous call and was so alarmed by the child's obvious injuries that she took him to the hospital. Dr. Andrew Butki treated the child and testified that he was sufficiently concerned by the extent of the injuries—significant bruising and a laceration on the child's lip—that he ordered a "head CT." Butki also testified that respondent's explanation for the injuries was inconsistent with their nature. And again, regardless of whether respondent caused the injuries, the fact that the injuries occurred so soon after the previous case permits an inference that respondent had not provided proper care or custody for the child and would likely be unable to do so within a reasonable time considering the child's age. The trial court did not clearly err when it found that grounds for termination under MCL 712A.19b(3)(g) had been established by clear and convincing evidence.

The trial court also did not clearly err when it found by finding clear and convincing evidence that termination was warranted under MCL 712A.19b(3)(j), which permits a trial court to terminate a parent's parental rights if there "is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Here, the evidence that the child suffered fairly serious injuries within a short period after the Department returned the child to respondent's care permits an inference that the child is not safe when left under her care and that respondent did not benefit from the services provided to her in the prior case. Although Lambertsen testified that respondent and the child had bonded during the previous case, she also acknowledged that the time respondent spent with the child was supervised. She acknowledged that respondent's behavior during this supervised time might be misleading, due to the nature of the supervision, and the "expectations and structure" that Lambertsen testified inherently come with supervised time. The evidence that the child suffered two separate injuries on the same day shortly after being entrusted to respondent's care is evidence that respondent is unable to properly supervise the child and that her inability to supervise him will likely lead to further injury.

We also do not agree that Butki's testimony must be disregarded as incredible. Although he was not a child abuse pediatrician, he had worked in the emergency room for three years and had been trained to identify symptoms of abuse. Regardless, we will defer to the trial court on such matters because it is in a superior position to determine the weight and credibility to be afforded a witness's testimony. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). On the totality of the record, we are not convinced that the trial court made a mistake when it found that there was a reasonable likelihood that the child would be harmed if returned to respondent's care. *In re Hudson*, 294 Mich App at 264; MCL 712A.19b(3)(j).

Having determined that the trial court did not err when it found that there were at least two statutory grounds for termination, we need not address any remaining alternate grounds for terminating respondent's parental rights. See *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2001).

Respondent also contends that the trial court clearly erred in determining that termination was in the child's best interests. This Court reviews for clear error the trial court's decision that termination of parental rights was in the child's best interests. *In re Olive/Metts*, 297 Mich App at 40.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App at 42. Whether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Respondent argues that she had a bond with the child and she was able to provide for the child. However, Douglas Park, a clinical psychologist, testified that respondent has significant difficulty recognizing the consequences for her actions, has difficulty with emotions, and would have difficulty caring for the child long-term. Although Lambertsen testified on behalf of respondent, she too indicated a concern with respondent's inappropriate statements in which she refused services. The child was to continue living with his paternal aunt, and she has demonstrated the ability to provide the type of permanency and stability he requires at his young age. Patricia Johnson, a foster care specialist with the Department, testified at the termination hearing that the child is very happy with his aunt, is in a healthy and safe situation, and appears

to be a very well-adjusted. In contrast, under the totality of the circumstances, it is unlikely that respondent will be able to provide similar permanency and stability. The trial court did not clearly err by finding that termination was in the child's best interests.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood